STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALI CAPONE HALL a/k/a ALI COPONE HALL,

Defendant-Appellant.

UNPUBLISHED
October 19, 2006

No. 264174
Berrien Circuit Court
LC No. 05-401850-FH

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

MEMORANDUM.

Defendant was convicted, following a bench trial, of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(*iii*), and resisting or obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant to serve concurrent terms of imprisonment of two to eight years for the marijuana conviction, and sixteen to twenty-four months for the resisting or obstructing conviction, and also ordered that defendant's operator's license be suspended for a total of 365 days, and that the conviction be reported to the Secretary of State. On appeal, defendant challenges the doubling of the maximum sentence for the marijuana offense from four to eight years, and the sanctions on his driving privileges. We reject the former challenge, but accept the latter, and remand for further proceedings.

The ordinary maximum sentence for defendant's marijuana offense is four years. MCL 333.7401(2)(d)(*iii*). However, MCL 333.7413(2) and (5) authorize a doubling of the sentence where there has been an earlier drug conviction. MCL 769.13(5) lists acceptable ways of establishing an earlier conviction, including information contained in a presentence report, or a statement of the defendant. Defendant's presentence report lists several convictions of controlled substance offenses, dating 1996 to 2004, and defendant, at sentencing, acknowledged that he in fact had a cocaine conviction on his record. Because these indications well establish that defendant was susceptible to enhanced sentencing for the instant offense, we affirm defendant's maximum sentence of eight years for possession with intent to deliver marijuana.

The judgment of sentence notes that "[t]he conviction is reportable to the Secretary of State under MCL 257.732 or MCL 281.1040," and the case event report indicates that defendant's driver's license was suspended for a total of 365 days. Defendant argues that the trial court was without authority to take either action. Plaintiff concurs. We agree.

MCL 333.7408a authorizes a trial court to order license suspensions in connection with convictions of the pertinent part of the Public Health Code, but subsection (11) bars this action in connection with sentences exceeding one year. Because defendant's minimum sentence exceeds one year, the order of suspension was improper.

MCL 257.732 requires reporting of a felony conviction involving a motor vehicle to the Secretary of State, but subsection (6) clarifies that "felony in which a motor vehicle was used" means a felony during the commission of which the person *operated* a motor vehicle" (emphasis added). In this case, the evidence showed defendant to be a passenger, not the driver, in connection with the conduct for which he was prosecuted. MCL 324.80131, which replaced the now repealed MCL 281.1040, in turn concerns operation of vessels on the waters of this state, see MCL 324.80131(5), a situation that does not arise in this case. For these reasons, we vacate defendant's sentence in pertinent part, and remand this case to the trial court with instructions to issue an amended judgment of sentence that includes no driving sanctions.

Affirmed in part, vacated in part, and remanded. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens